UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WELLS FARGO, et al.	§	Civil Action No. 2:06-CV-72
	§	
Defendants.	§	
	§	
	§	
	§	**JURY TRIAL DEMANDED**

The City National Corporation and City National Bank reassert their motion to dismiss for improper venue currently subject to the court's ordered jurisdictional discovery. The answer provided below does not constitute a waiver of this motion.

ORIGINAL ANSWER, COUNTERCLAIM, AND JURY DEMAND OF DEFENDANTS AND COUNTER-PLAINTIFFS CITY NATIONAL CORPORATION AND CITY NATIONAL BANK[1]

Plaintiff DataTreasury Corp. filed a Complaint for Patent Infringement ("Complaint") on April 18, 2006 in Civil Action No. 2:06-CV-165, captioned *DataTreasury Corporation vs. City National Corporation and City National Bank*. On June 1, 2006, Defendants City National Corporation ("CNC") and City National Bank ("CNB") (jointly "City National Defendants") moved to dismiss the complaint for lack of proper venue, to dismiss for failure to state a claim,

[1] Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to US Patent Nos. 5,910,988 and 6,032,137 (collectively "the Ballard patents") for the City National Defendants. Accordingly, the City National Defendants will answer, assert affirmative defenses, and assert counterclaims with respect to allegations regarding the Ballard patents at the appropriate time if and when the Court lifts the stay. Should the stay be lifted on patent claims related to the Ballard patents, the City National Defendants reserve the right to supplement and/or amend their Answer, including the addition of affirmative defenses and/or counterclaims related to the Ballard patents at the time specified by the Court or otherwise agreed to by the parties.

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or in the alternative, for more definite statement. Civil Action No. 2:06-CV-165 was consolidated into this action on June 21, 2006. The court allowed jurisdictional discovery and denied the City National Defendants' motion to dismiss without prejudice on February 26, 2007.

The City National Defendants, by and through its undersigned attorneys, respectfully file this Original Answer, Counterclaim, and Jury Demand to Plaintiff DataTreasury Corporation's ("DTC") Complaint for Patent Infringement ("Complaint") as follows:

I. THE PARTIES

1. City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint, and, accordingly, deny the same.

2. City National Defendants admit that CNC is a Delaware corporation with a principal place of business at the address indicated in paragraph 2. City National Defendants admit that Michael B. Cahill is CNC's Registered Agent for Service at the address indicated in paragraph 2. City National Defendants deny any remaining allegations in paragraph 2 of the Complaint.

3. City National Defendants admit that CNB is a wholly-owned subsidiary of CNC. City National Defendants admit that CNB can be served with process through its President, Christopher J. Warmouth, at the address indicated in paragraph 3. City National Defendants deny the remaining allegations in paragraph 3 of the Complaint.

II. JURISDICTION AND VENUE

4. City National Defendants admit that the Complaint alleges that this is an action for patent infringement under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. City National Defendants admit that subject-matter jurisdiction of

patent claims is conferred upon this Court by 28 U.S.C. § 1338. City National Defendants deny any patent infringement.

5. As to the first allegation of paragraph 5, City National Defendants dispute that general personal jurisdiction is conferred through minimum contacts with the forum, and accordingly deny the same. The City National Defendants dispute that the forum has specific personal jurisdiction and, accordingly, the second allegation of paragraph 5 is denied. As to the allegations regarding other named defendants, City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint, and, accordingly, deny the same.

6. City National Defendants admit that 28 U.S.C. §§ 1391 and 1400 govern the venue of patent claims. City National Defendants deny any patent infringement and deny any remaining allegations in paragraph 6 of the Complaint. As to the allegations regarding other named defendants, City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint, and, accordingly, deny the same.

7. City National Defendants admit that CNB is a class AA owner of The Clearing House Payments Company, L.L.C. Otherwise, City National Defendants deny the allegations of paragraph 7.

8. City National Defendants deny the allegations of paragraph 8 of the Complaint.

III. PATENT INFRINGEMENT

9. City National Defendants admit that United States Patent No. 5,910,988 ("the '988 patent") issued on June 8, 1999, and identifies Claudio R. Ballard as the purported inventor. City National Defendants are without knowledge or information sufficient to form a belief as to

the truth of the remaining allegations of paragraph 9 of the Complaint, and, accordingly, deny the same. However, the Court has stayed this case with respect to the '988 patent.

10. City National Defendants admit that United States Patent No. 6,032,137 ("the '137 patent") issued on February 29, 2000, and identifies Claudio R. Ballard as the purported inventor. City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10 of the Complaint, and, accordingly, deny the same. However, the Court has stayed this case with respect to the '137 patent.

11. City National Defendants admit that United States Patent No. 5,265,007 ("the '007 patent") issued on November 23, 1993, and identifies John L. Barnhard, Jr., Thomas k. Bowen, Terry L. Geer, and John W. Liebersbach as the purported inventors. City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11 of the Complaint, and, accordingly, deny the same.

12. City National Defendants admit that United States Patent No. 5,717,868 ("the '868 patent") issued on February 10, 1998, and identifies David L. James as the purported inventor. City National Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 12 of the Complaint, and, accordingly, deny the same.

13. City National Defendants deny the allegations of paragraph 13 of the Complaint in that DTC is not entitled to any recovery under 35 U.S.C. § 285.

IV. COUNT ONE – THE '988 PATENT

14. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '988 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 14 at the appropriate time if and when the Court lifts the stay.

15. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '988 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 15 at the appropriate time if and when the Court lifts the stay.

16. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '988 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 16 at the appropriate time if and when the Court lifts the stay.

V. COUNT TWO – THE '137 PATENT

17. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '137 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 17 at the appropriate time if and when the Court lifts the stay.

18. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '137 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 18 at the appropriate time if and when the Court lifts the stay.

19. Pursuant to the order issued by the Court on January 12, 2007, this case has been stayed with respect to the '137 patent for the City National Defendants. Accordingly, the City National Defendants will answer the allegations in paragraph 19 at the appropriate time if and when the Court lifts the stay.

VI. COUNT THREE – THE '007 PATENT

20. City National Defendants deny the allegations of paragraph 20 of the Complaint.

21. City National Defendants deny the allegations of paragraph 21 of the Complaint.

22. City National Defendants deny the allegations of paragraph 22 of the Complaint.

VII. COUNT FOUR – THE '868 PATENT

23. City National Defendants deny the allegations of paragraph 23 of the Complaint.

24. City National Defendants deny the allegations of paragraph 24 of the Complaint.

25. City National Defendants deny the allegations of paragraph 25 of the Complaint.

GENERAL DENIAL

City National Defendants deny all allegations in DTC's Complaint not specifically admitted in their Answer.

VIII. PRAYER FOR RELIEF

With respect to the allegations in this section of the Complaint, City National Defendants admit that DTC seeks the relief set forth therein, but denies that DTC is entitled to any of the relief requested against City National Defendants. Otherwise, the allegations of the "Prayer for Relief" section of the Complaint are denied.

AFFIRMATIVE DEFENSES

First Defense

26. City National Defendants have not infringed and are not infringing any valid and enforceable claim of the '007 or '868 patents.

Second Defense

27. City National Defendants have not contributed to and are not contributing to the infringement of any valid and enforceable claim of the '007 or '868 patents.

Third Defense

28. City National Defendants have not induced and are not inducing the infringement of any valid and enforceable claim of the '007 or '868 patents.

Fourth Defense

29. The claims of the '007 and/or '868 patents are invalid because they fail to meet the conditions for patentability in Title 35, United States Code, including, but not limited to §§ 101, 102, 103 and 112 thereof.

Fifth Defense

30. The '007 and/or '868 patents are unenforceable by reason of inequitable conduct committed at the United States Patent and Trademark Office during prosecution of the applications that eventually matured into the '007 and/or '868 patents. By way of example but without limitation, patentee failed to disclose information or affirmatively misrepresented information to the USPTO of which the patentee was aware was material to the examination of one or more Application. For example, the patentee failed to advise the USPTO of material prior information regarding prior art.

Sixth Defense

31. DTC's claims of alleged infringement of the '007 and/or '868 patents are barred, in whole or part, under the doctrine of laches and /or the statute of limitations.

Seventh Defense

32. DTC's Complaint, and each purported claim against the City National Defendants alleged therein, fails to state facts upon which relief can be granted against the City National Defendants.

Eighth Defense

33. City National Defendants are not subject to personal jurisdiction in the Eastern District of Texas.

Ninth Defense

34. The Eastern District of Texas is not a proper venue for this action.

COUNTERCLAIMS

City National Defendants assert the following counterclaims against Plaintiff/Counter-Defendant DataTreasury Corporation ("DTC"):

35. City National Defendants re-allege and incorporate by reference herein the allegations of paragraphs 1-34 above.

36. These counterclaims arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United States set forth in Title 35 of the United States Code and Title 37 of the Code of Federal Regulations.

37. This Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a). Venue is based on 28 U.S.C. §§ 1391(b), (c), and 1400(b). This Court has personal jurisdiction over DTC.

38. DTC filed the Complaint against the City National Defendants for infringement of the '007 and '868 patents. Accordingly, an actual justiciable case or controversy exists between DTC and the City National Defendants.

First Counterclaim
(Declaratory Judgment of Non-Infringement)

39. City National Defendants re-allege and incorporate by reference herein the allegations of paragraphs 1-38 above.

40. City National Defendants have not infringed and are not infringing any valid and enforceable claim of the '007 or '868 patents.

41. City National Defendants have not contributed to and are not contributing to the infringement of any valid and enforceable claim of the '007 or '868 patents.

42. City National Defendants have not induced and are not inducing the infringement of any valid and enforceable claim of the '007 or '868 patents.

Second Counterclaim
(Declaratory Judgment of Invalidity)

43. City National Defendants re-allege and incorporate by reference herein the allegations of paragraphs 1-42 above.

44. The '007 and/or '868 patents are void and invalid for failure to comply with the requirements of Title 35, United States Code, including, but not limited to Sections 101, 102, 103, and 112 and the rules, regulations, and laws pertaining thereto.

Third Counterclaim
(Declaratory Judgment of Unenforceability)

45. City National Defendants re-allege and incorporate by reference herein the allegations of paragraphs 1-44 above.

46. The ‘007 and/or ‘868 patents are unenforceable by reason of inequitable conduct committed at the United States Patent and Trademark Office during prosecution of the applications that eventually matured into the ‘007 and/or ‘868 patents.

Fourth Counterclaim
(Laches and/or Statute of Limitations)

47. City National Defendants re-allege and incorporate by reference herein the allegations of paragraphs 1-46 above.

48. DTC’s claims of alleged infringement of the ‘007 and/or ‘868 patents are barred, in whole or part, under the doctrine of laches and /or the statute of limitations.

Fifth Counterclaim
(Exceptional Case)

49. City National Defendants re-allege and incorporate by reference herein the allegation of paragraphs 1-48 above.

50. This is an exceptional case under 35 U.S.C. § 285 entitling City National Defendants to recover its reasonable attorneys’ fees.

PRAYER FOR RELIEF

A. Adjudge, declare, and decree that all of DTC’s claims against each of the City National Defendants are denied;

B. Adjudge, declare, and decree that the Complaint against each of the City National Defendants be dismissed with prejudice;

C. Adjudge, declare, and decree that the claims of the ‘007 and ‘868 patents are not infringed by any of the City National Defendants;

D. Adjudge, declare, and decree that the claims the ‘007 and ‘868 patents are invalid;

E. Adjudge, declare, and decree that the claims of the ‘007 and ‘868 patents are unenforceable;

F. Find this case exceptional and award reasonable attorneys’ fees to City National Defendants;

G. Award costs of this case to City National Defendants;

H. Award to City National Defendants any further relief to which City National Defendants are entitled.

JURY DEMAND

City National Defendants demand a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: March 9, 2007 Respectfully submitted,

By: */s/ Elizabeth L. DeRieux*

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ATTORNEYS FOR DEFENDANTS
CITY NATIONAL CORPORATION AND
CITY NATIONAL BANK

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 9th day of March, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by, electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Elizabeth L. DeRieux
Elizabeth L. DeRieux

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